

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RUBEN SMITH, M.D.,

Plaintiff,

MEMORANDUM AND ORDER

-against-

CV 04-3555 (LDW) (ARL)

FRANKLIN HOSPITAL MEDICAL CENTER,

Defendant.

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WEXLER, District Judge

Plaintiff Ruben Smith, M.D., brought this employment discrimination action against defendant Franklin Hospital Medical Center, later named Franklin Hospital, asserting age discrimination claims under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (the “ADEA claims”) and various supplemental state law claims. Upon defendant’s motion to dismiss, plaintiff withdrew certain of the state law claims and this Court dismissed certain others, leaving the ADEA claims and state law claims for breach of contract, breach of implied covenant of good faith, and fraudulent misrepresentation. Defendant now moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure to dismiss the remaining claims; plaintiff opposes the motion.

Upon consideration, the Court concludes that genuine issues of material fact exist, precluding the entry of summary judgment as to the ADEA claims. See Fed. R. Civ. P. 56(c) (party seeking summary judgment must demonstrate that “there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law”); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

However, the Court grants summary judgment dismissing the breach of contract, breach of implied covenant of good faith, and fraudulent misrepresentation claims. A review of the record shows that plaintiff fails to present sufficient evidence of written or oral statements giving him a right to continued employment for a fixed duration or limiting the defendant's right to terminate his employment, and his status as an at-will employee negates his claim of reasonable reliance on the alleged misrepresentation that his job was secure after the takeover of Franklin Hospital by North Shore-Long Island Jewish Health System. See Albert v. Loksen, 239 F.3d 256, 264 (2d Cir. 2001); DeMicco v. Home Depot USA, Inc., 101 F. Supp. 2d 122, 124-25 (E.D.N.Y. 2000); Clark v. Helmsley Windsor Hotel, 625 N.Y.S.2d 159, 159 (1st Dep't 1995).

Accordingly, defendant's motion for summary judgment is granted in part and denied in part. The motion is granted as to plaintiff's breach of contract, breach of implied covenant of good faith, and fraudulent misrepresentation claims, and those claims are dismissed; the motion is denied as to plaintiff's ADEA claims. The parties are directed to contact Courtroom Deputy Josiah Kharjie to schedule the trial.

SO ORDERED.

/s/
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
November 17, 2006